CHESAPEAKE & O. RY. CO. *v.* GHEE'S ADM'X.

Jan. 13, 1910.

[66 S. E. 826.]

1. Appeal and Error (§ 1031*)—Harmless Error—Evidence of Pecuniary Condition of Decedent—Presumption as to Prejudicial Effect.—In a death action by a widow, the admission of evidence as to decedent's pecuniary condition was reversible error; it being calculated to excite the jury's sympathy, and presumed to have wrongfully affected the verdict.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4040; Dec. Dig. § 1031.* 14 Va.-W. Va. Enc. Dig. 305.]

2. Master and Servant (§ 293*)—Injuries to Servant—Care as to Employees in Railroad Tunnel—Instructions.—In an action for the killing of a railroad laborer in a tunnel by a material train, charging negligence of defendant in that no warning was given of the approach of the train, that no light was exhibited on the front end of the front car, and that no lookout was stationed at that place to warn employees of the train's approach, where the evidence showed that under the conditions existing in the tunnel when the accident occurred no man on the front end of the front car with a light could have seen decedent, nor could decedent have seen the light on account of smoke, and that warning of whistle and bell was given as well as the exhaust of the engine pushing the cars, a charge that it was defendant's duty to use reasonable precautions for the safety of its employees, and that the more dangerous the place in which defendant placed its employees to work the greater the duty it owed them, and the greater should be the precautions taken for their safety, and that, if decedent was killed by the negligence of defendant's employees in not taking proper precautions for his safety, as charged in the declaration, and decedent was free from fault, plaintiff should recover, was error.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1155, 1156; Dec. Dig. § 293.* 7 Va.-W. Va. Enc. Dig. 718; 4 id. 260; 9 id. 705; 14 id. 563.]

3. Master and Servant (§ 296*)—Injuries to Servant—Contributory Negligence—Instructions.—The charge was erroneous as ignoring decedent's duty, under the circumstances, to exercise a higher degree of care for his own safety than would be necessary under ordinary conditions attending such work.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 1188; Dec. Dig. § 296.* 7 Va.-W. Va. Enc. Dig. 718; 4 id. 260; 9 id. 705; 14 id. 563.]

4. Master and Servant (§ 296*)—Injuries to Servant—Contributory Negligence—Instructions.—In an action for the killing of a railroad

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

laborer in a tunnel by a material train, where there is no evidence tending to prove that decedent was placed in a position of peril by an act of commission or omission of defendant, a charge that one may not, by his own negligence, place another in a perilous situation, and, when sued for injuries resulting therefrom, cast the burden on plaintiff to show that the injured person acted with reasonable care, that persons in great peril are not required to exercise presence of mind required by prudent men under ordinary circumstances, but that, before the rule has any application, the evidence must show that defendant's negligence placed the person in a given perilous position, was erroneous.

Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1192, 1194; Dec. Dig. § 296.* 7 Va.-W. Va. Enc. Dig. 718.]

5. Master and Servant (§ 296*)—Injuries to Servant—Contributory Negligence—Instructions.—An instruction that, to charge decedent with negligence and with notice of danger, the danger must have been plain and clear, so that, if he did not see or apprehend it, he must necessarily have been in fault, was erroneous, since negligence may be independent of danger.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1185, 1187; Dec. Dig. § 296.* 9 Va.-W. Va. Enc. Dig. 702, et seq.]

6. Trial (§ 260*)—Request for Instructions—Matters Embraced in Charge Given.—The court having charged that if the whistle was sounded as the train went into the tunnel and the bell was ringing, and the engine pushing the cars was using steam and making the noise of the exhaust, and these were the usual and customary warnings, and were in themselves reasonable precautions under all the circumstances to be taken for the safety of employees working in the tunnel, no negligence could be imputed to defendant and defendant should recover, and that the burden of proof was on plaintiff to show that decedent was killed by defendant's negligence; and if the jury, upon the evidence, were left to merely conjecture as to how decedent was killed they should find for defendant, and that negligence of defendant must be proved by affirmative evidence which must show more than a probability of the negligent act, it was not error to refuse charges that the burden was on plaintiff to show that decedent was killed by defendant's negligence, and that, it being left to conjecture as to how decedent was injured, the jury should find for defendant, and that if the whistle was sounded as the train went into the tunnel and the bell was ringing, and the engine pushing the cars was using steam, making the noise of the exhaust, and these were the usual and customary warnings, no negligence could be imputed to defendant, and defendant should recover.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 657; Dec. Dig. § 260.* 7 Va.-W. Va. Enc. Dig. 742.

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*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

7. Master and Servant (§ 296*)—Injuries to Servant—Contributory Negligence—Instructions.—A charge that where an employee has two ways of performing an act in the course of his employment, one safe and the other dangerous, he owes a positive duty to his employer to use the safe method, and any departure from the path of safety will prevent a recovery if he is injured, and if decedent could have gone to either the north or south side of the tracks, and there be safe from the passing trains, or on the track upon which a freight train had passed before the passing on the other track of the train which killed him, and did not do so, but remained upon the track upon which he was killed, which was a dangerous position from any trains passing upon such track, they must find for defendant, was properly modified by inserting in the last line between the word "track" and the word "they" the words "and that a reasonably prudent person, under the facts and circumstances of the case, would and should have done so."

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 1188; Dec. Dig. § 296.* 9 Va.-W. Va. Enc. Dig. 714.]

Error from Law and Equity Court of City of Richmond.

Action by George Ghee's administratrix against the Chesapeake & Ohio Railway Company. Judgment for plaintiff, and defendant brings error. Reversed and remanded for new trial.

H. Taylor, Jr., for plaintiff in error.
Bibb & Bibb, for defendant in error.

HOUFF & HOLLER *v.* GERMAN AMERICAN INS. CO.

Jan. 13, 1910.

[66 S. E. 831.]

1. Insurance (§ 335*)—Iron-Safe Clause—Compliance.—Under an iron-safe clause requiring the keeping of a complete itemized inventory, the insurer has a right to such a compliance with its terms as will inform him fairly as to the stock carried by the insured, and, in case of loss, as to the stock burned and the fair cash value thereof.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 853; Dec. Dig. § 335.* 6 Va.-W. Va. Enc. Dig. 85; 14 id. 447.]

2. Insurance (§ 335*)—Iron-Safe Clause—Making Inventory.—A summary stating merely the value of each line of goods, as shown by general footings of an itemized inventory taken by the insured but not preserved, is not a "complete itemized inventory" required by an iron-safe clause.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 853; Dec. Dig. § 335.* 6 Va.-W. Va. Enc. Dig. 447.]

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*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.